

Department of the Navy, DoD

§ 750.31

may be required to submit to a physical or mental examination by a physician employed by any Federal agency. Upon written request, a copy of the report of the examining physician shall be provided;

(ii) Itemized bills for medical, dental, and hospital expenses incurred, or itemized receipts of payments of such expenses;

(iii) A statement of expected expenses for future treatment;

(iv) If a claim is made for lost wages, a written statement from the employer itemizing actual time and wages lost;

(v) If a claim is made for lost self-employed income, documentary evidence showing the amount of earnings actually lost; and

(vi) Any other evidence or information which may affect the liability of the United States for the personal injury or the damages claimed.

(3) *Property damage.* (i) Proof of ownership;

(ii) A detailed statement of the amount claimed for each item of property;

(iii) An itemized receipt of payment for necessary repairs or itemized written estimates of the cost of repairs;

(iv) A statement listing date of purchase, purchase price, and salvage value where repair is not economical; and

(v) Any other evidence or information which may affect the liability of the United States for the property damage claimed.

(b) *Failure to submit necessary documentation.* If claimant fails to provide sufficient supporting documentation, claimant should be notified of the deficiency. If after notice of the deficiency, including reference to 28 CFR 14.4, the information is still not supplied, two follow-up requests should be sent by certified mail, return receipt requested. If after a reasonable period of time the information is still not provided, the appropriate adjudicating authority should deny the claim.

[57 FR 4722, Feb. 7, 1992, as amended at 72 FR 53420, Sept. 19, 2007]

§ 750.28 Amendment of the claim.

A proper claim may be amended at any time prior to settlement, denial, or the filing of suit. An amendment must

be submitted in writing and must be signed by the claimant or duly authorized agent or legal representative. No finally denied claim for which reconsideration has not been requested under § 750.31 may be amended.

§ 750.29 Investigation and examination.

Subpart A of this part requires an investigation for every incident that may result in a claim against or in favor of the United States. Where a previously unanticipated claim is filed against the Government and an investigation has not already been conducted, the appropriate claims officer shall immediately request an investigation. See subpart A of this part for specific action required by an adjudicating authority.

§ 750.30 Denial of the claim.

Final denial of an administrative claim shall be in writing and shall be sent to the claimant, his duly authorized agent or legal representative by certified or registered mail, with return receipt requested. The notification of final denial shall include the reasons for the denial. The notification shall include a statement informing the claimant of his right to file suit in the appropriate Federal district court not later than 6 months after the date of the mailing of the notification. 28 CFR 14.9(a).

§ 750.31 Reconsideration.

(a) *Request.* Prior to the commencement of suit and prior to the expiration of the 6-month period for filing suit, a claimant or his duly authorized agent or legal representative may present a request for reconsideration to the authority who denied the claim. The request shall be in writing and shall state the reasons for the requested reconsideration. A request for reconsideration is presented on the date it is received by the DON. 28 CFR 14.9(b).

(b) *Proper basis.* A request for reconsideration shall set forth claimant's reasons for the request, and shall include any supplemental supporting evidence or information. Any writing communicating a desire for reconsideration that reasonably appears to have been presented solely for the purpose of

extending the statutory period for filing suit, shall not be treated as a request for reconsideration. Claimant or claimant's authorized representative shall be notified promptly that the writing is not considered a proper request for reconsideration.

(c) *Effect of presentment of request.* The presentment of a proper request for reconsideration starts a new 6-month period for the DON to act on the request to reconsider. The claimant may not file suit until the expiration of the new 6-month period, or until after the date of mailing of the final denial of the request. Final denial of a request for reconsideration shall be accomplished in the manner prescribed in § 750.30. 28 CFR 14.9(b).

§ 750.32 Suits under the Federal Tort Claims Act (FTCA).

(a) *Venue.* Venue is proper only in the judicial district where the plaintiff resides or where the act or omission complained of occurred. 28 U.S.C. 1402.

(b) *Jury trial.* There is no right to trial by jury in suits brought under the FTCA. 28 U.S.C. 2402.

(c) *Settlement.* The Attorney General of the United States, or designee, may arbitrate, compromise, or settle any action filed under the FTCA. 28 U.S.C. 2677.

(d) *Litigation support*—(1) *Who provides.* The adjudicating authority holding a claim at the time suit is filed shall be responsible for providing necessary assistance to the Department of Justice official or U.S. Attorney responsible for defending the Government's interests.

(2) *Litigation report.* A litigation report, including a legal memorandum emphasizing anticipated issues during litigation, shall be furnished to the appropriate Department of Justice official or U.S. Attorney.

(3) *Pretrial discovery.* Complete and timely responses to discovery requests are vital to the effective defense of tort litigation. Subject to existing personnel and resources available, appropriate assistance shall be provided. The Judge Advocate General should be notified promptly when special problems are encountered in providing the requested assistance.

(4) *Preservation of evidence.* Tort litigation is often accomplished over an extended period of time. Every effort shall be made to preserve files, documents, and other tangible evidence that may bear on litigation. Destruction of such evidence, even in accordance with routine operating procedures, undermines defense of a case.

§ 750.33 Damages.

(a) *Generally.* The measure of damages is determined by the law of the place where the act or omission occurred. When there is a conflict between local and applicable Federal law, the latter governs. 28 U.S.C. 1346(b).

(b) *Limitations on liability.* The United States is not liable for interest prior to judgment or for punitive damages. In a death case, if the place where the act or omission complained of occurred provides for only punitive damages, the United States will be liable in lieu thereof, for actual or compensatory damages. 28 U.S.C. 2674.

(c) *Setoff.* The United States is not obligated to pay twice for the same injury. Claimants under the FTCA may have received Government benefits or services as the result of the alleged tort. The cost of these services or benefits shall be considered in arriving at any award of damages. For example, the cost of medical or hospital services furnished at Government expense, including TRICARE payments, shall be considered. Additionally, benefits or services received under the Veterans Act (38 U.S.C. 101-800) must be considered. *Brooks v. United States*, 337 U.S. 49 (1949).

(d) *Suit.* Any damage award in a suit brought under the FTCA is limited to the amount claimed administratively unless based on newly discovered evidence. 28 U.S.C. 2675(b). Plaintiff must prove the increased demand is based on facts not reasonably discoverable at the time of the presentment of the claim or on intervening facts relating to the amount of the claim.

[57 FR 4722, Feb. 7, 1992, as amended at 72 FR 53420, Sept. 19, 2007]

§ 750.34 Settlement and payment.

(a) *Settlement agreement*—(1) *When required.* A settlement agreement, signed by the claimant, must be received prior